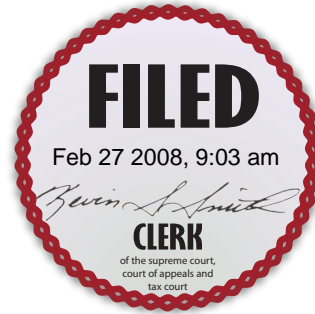


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JUANELO MARTINEZ-GARCIA,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A02-0706-CR-512
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Heather Welch, Judge
Cause No. 49F09-0510-FD-172931

February 27, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Juanelo Martinez-Garcia appeals from the trial court's revocation of his probation. Martinez-Garcia raises one issue for our review, namely, whether the court abused its discretion in revoking his probation.

We affirm.

FACTS AND PROCEDURAL HISTORY

On October 6, 2005, the State charged Martinez-Garcia with two counts of Operating a Vehicle While Intoxicated, each as a Class D felony, and one count of Driving While Suspended, a Class A misdemeanor. On March 28, 2006, Martinez-Garcia pleaded guilty to operating a vehicle while intoxicated and driving while suspended. In exchange for his plea, the State dismissed the remaining charge of operating a vehicle while intoxicated. The court accepted Martinez-Garcia's guilty plea on May 24 and sentenced him to 365 days, with 355 days suspended to probation. The court also suspended Martinez-Garcia's license for 365 days. The court's order on probation placed the following conditions, among others, on Martinez-Garcia: "[do] not commit a criminal offense . . . "; "refrain from all use of alcohol and controlled substances and submit to drug or alcohol-sensor testing"; and "maintain full-time employment or perform eight hours community service per week." Appellant's App. at 32.

On February 12, 2007, Martinez-Garcia was arrested for driving without a license. On February 26, the State filed its notice of probation violation, alleging that Martinez-Garcia had been arrested in violation of his probation and had submitted "a dilute urine

drug screen.” Id. at 34. On March 23, the court held a probation violation hearing. Counsel represented Martinez-Garcia at that hearing. Although the court ordered Martinez-Garcia’s probation continued with two additional conditions, namely, that Martinez-Garcia obtain full-time employment and participate in English language classes, the court did not determine whether Martinez-Garcia violated his probation. Rather, the court ordered Martinez-Garcia to submit to another drug test and set a compliance hearing for April 17.

At the April 17 hearing, Martinez-Garcia, by counsel, informed the court that he and the State had agreed for him to complete forty hours of community service in response to his alleged probation violation for the February 12 arrest. The court then engaged Martinez-Garcia and his counsel, Albert Serrano, in the following exchange:

MR. SERRANO: We would ask for a compliance date [of] May 18th.

* * *

THE COURT: So, I’m not finding him in violation. I’m just setting a compliance date. Is that what we’re doing?

* * *

MR. SERRANO: Judge, I would ask that it be held for the 18th.

THE COURT: Do you want me to take [the alleged violation] under advisement?

MR. SERRANO: Yes, Judge.

* * *

THE COURT: So . . . Mr. Martinez-Garcia . . . we’re going to take the Probation Violation under advisement . . . and Mr. Serrano tells me that you’re agreeing to do forty (40) hours of community service work . . . and we’ll set a compliance hearing on May the 18th . . . and then we’ll have a

hearing then to discuss whether your completion should be successful[] completion . . . or whether I should find you in violation

* * *

THE COURT: So make sure you've done that community service work.

Transcript at 18-21.

On May 18, 2007, the court held another compliance hearing. At that hearing, the parties agreed that Martinez-Garcia had completed forty hours of community service. However, Martinez-Garcia, again represented by counsel, admitted that he had been unemployed for at least a month. The court concluded that Martinez-Garcia “did not successfully complete probation because he didn’t follow some pretty substantial terms of probation.” *Id.* at 32. The court then revoked his probation, and this appeal ensued.

DISCUSSION AND DECISION

Martinez-Garcia contends that the trial court erred when it revoked his probation. We review a trial court’s decision to revoke probation under an abuse of discretion standard. *Jones v. State*, 838 N.E.2d 1146, 1148 (Ind. Ct. App. 2005), *trans. denied*. A probation revocation hearing is civil in nature and the State need only prove the alleged violations by a preponderance of the evidence. *Cox v. State*, 706 N.E.2d 547, 551 (Ind. 1999). We will consider all the evidence most favorable to the judgment of the trial court without reweighing that evidence or judging the credibility of witnesses. *Id.* If there is substantial evidence of probative value to support the trial court’s conclusion that a defendant has violated any terms of probation, we will affirm its decision to revoke probation. *Id.* The violation of a single condition of probation is sufficient to revoke

probation. Wilson v. State, 708 N.E.2d 32, 34 (Ind. Ct. App. 1999). A defendant is not entitled to serve a sentence in a probation program; rather, such placement is a “matter of grace” and a “conditional liberty that is a favor, not a right.” Jones, 838 N.E.2d at 1148.

Martinez-Garcia argues that the court abused its discretion when it used his February 12 arrest for driving while suspended as the basis for revoking his probation. Specifically, Martinez-Garcia asserts that the court was prohibited from considering that arrest because Martinez-Garcia completed the forty hours of community service he agreed with the State to perform. In support of that position, Martinez-Garcia cites Watson v. State, 833 N.E.2d 497, 500 (Ind. Ct. App. 2005), in which we held: “Once the trial court accepted the probation modification agreement, it was bound by its terms.” But Watson is readily distinguishable. Here, the trial court did not accept Martinez-Garcia’s agreement to perform forty hours of community service. Rather, the court, after discussing the matter with Martinez-Garcia’s counsel, took “the Probation Violation under advisement.” Transcript at 20.

In any event, the violation of a single condition of probation is sufficient to revoke probation. Wilson, 708 N.E.2d at 34. At the March 23rd hearing, the court added full-time employment as a condition of Martinez-Garcia’s probation. And at the May 18th hearing, Martinez-Garcia admitted¹ that he had not maintained full-time employment. Accordingly, there is substantial evidence of probative value to support the trial court’s conclusion that Martinez-Garcia violated a term of probation. We therefore must affirm the court’s decision to revoke his probation. See Cox, 706 N.E.2d at 551.

¹ In two footnotes, Martinez-Garcia asserts that the trial court denied him his due process rights in a variety of ways. But Martinez-Garcia presents no cogent argument in support of those assertions. As such, those arguments are waived. See Ind. Appellate Rule 46(A)(8)(a).

Affirmed.

BAILEY, J., and CRONE, J., concur.